

### **REMARKS/ARGUMENTS**

This Amendment is filed in response to the Office action of January 14, 2008. An application for a two month extension of time in which to respond is being filed concurrently herewith.

With regard to the claims, claims 1 - 71, 73 and 90 - 92 were cancelled. All of the remaining pending claims were amended. Consideration of claims 72, 74 - 89, and 93 - 100 is requested.

#### **Remarks Regarding the Amendments to the Specification**

Changes were made to seventeen (17) paragraphs of the specification. The changes are self explanatory and were made to more clearly describe the scope of the inventions. No new matter has been added.

#### **Remarks Regarding the Amendments to the Claims**

On September 25, 2007, a restriction requirement was issued wherein allegedly different inventions were set forth as Groups I and II. Group I was defined as claims 1 - 71 which were drawn to methods and Group II was defined as claims 72 - 100 which were drawn to apparatuses. In response, Applicant elected Group II (*i.e.*, claims 72 - 100).

In the January 14, 2008 Office Action, however, only the two pending independent claims were examined; the stated reason being that claims 73 - 97 and 99 - 100 depend from non-elected claims. Clearly, however, the referenced claim number in each of dependent claims 73 - 97 and 99 - 100 constituted a typographical error such that each referenced claim number was off by a value of one (1). The fact that the errors are only typographical in nature is quite obvious by both the context of the claim language itself, as well as the Office's own acknowledgement in its restriction requirement wherein the Group II inventions were defined as claims 72 - 100 and were acknowledged as being drawn to apparatuses.

Nevertheless by this Amendment, Applicant has modified certain of the remaining, pending dependent claims in Group II to correct these obvious typographical errors and

reflect the original intent. Accordingly, claims 72, 74 - 89, and 93 - 100 remain in this application.

In addition to the foregoing amendments, Applicant comments on the following additional claim amendments.

Claims 1 - 71 were previously withdrawn as a result of the restriction requirement. By this Amendment, Applicant is cancelling these claims without waiver of Applicant's right to pursue these claims in a continuation application.

Claim 73 was cancelled and independent claim 72 was amended to include the limitations of claim 73. The remaining amendments to claim 72 were made to more particularly define the claimed invention and were not as the result of any comments by the Office or for patentability.

The remaining amendments to claim 77 were made to more particularly define the claimed invention and were not as the result of any comments by the Office or for patentability.

Claim 81 was re-written as an independent claim, and now includes certain of the limitations of its intended parent claim 72. The remaining amendments to claim 81 were made to more particularly define the claimed invention and were not as the result of any comments by the Office or for patentability.

Claim 89 was re-written as an independent claim, and now includes certain of the limitations of its intended parent claim 72 and of claim 92 (now cancelled).

Claim 98 was amended to more particularly define the claimed invention and was not amended as the result of any comments by the Office or for patentability.

**Arguments in Response to the Rejected Claims**

The Examiner rejected independent claims 72 and 98 under 35 U.S.C. 102(e) as being anticipated by Griner, et al U.S. Patent No. 6,917,566.

As to independent claim 72, this claim includes the limitation: "the computing device being further configured to create segment files on the first hard drive as the raw event file is being created, each *segment file including a song* performed during the performance." Thus, claim 72 requires that each segment file include a song. This is supported in the specification wherein it is disclosed that a segment file can be one song or more than one song. (Appl'n. p. 19, line 21 - p. 20, line 9) On the other hand, the cited portions of Griner do not disclose this limitation. Griner refers to "secondary event files," however they are files that at most constitute a portion of one song, and not an entire song. (Griner 6:64)

Moreover claim 72 as amended includes the limitation: "a backup recorder coupled to the input processor, the backup recorder including a second hard drive for *storing a copy of the processed audio signal*." There is no citation in the Office Action, however, to a portion of Griner that discloses this limitation. Griner discloses a backup module 410. However this module 410 is for storing the *original* audio signal. (Griner 6:26) The processed audio signal of claim 72, on the other hand, is the signal that is sent from the input processor 12 to the computing device 16. (Appl'n. p. 19, lines 5 - 20)

Accordingly for at least the foregoing two reasons, claim 72 is not anticipated by Griner, and withdrawal of the rejection to this claim is requested.

Dependent claims 74 - 80 which depend, directly or indirectly from independent claim 72, and incorporate all of the limitations of this claim, include additional limitations. Thus for these reasons and for the reasons discussed above, Applicant submits that dependent claims 74 - 80 patentably distinguish over Griner. Furthermore, these dependent claims are directed to additional patentable combinations of features and are allowable on those bases as well.

There are additional grounds in support of the patentability of claim 76. This includes the limitation "wherein the input processor *includes an equalizer* configured to adjust levels of components of the original audio signal." The cited portions of Griner,

however, do not disclose an input processor that includes an equalizer. There is a discussion in Griner of an equalizer. However the Griner equalizer is part of the secondary editing stations 220A - C and is not part of the Griner input processor. (Griner, 7:27) Accordingly, claim 76 is patentable over Griner.

There are additional grounds in support of the patentability to claim 80. This claim includes the limitation "wherein the computing device includes editing software to enable editing of content of segment files." The cited portions of Griner however do not disclose this limitation. At page 3 of the Office Action, it is stated that the computing device is interpreted to be the editing module 200 of Griner. However the editing module 200 cannot be the computing device of claim 80. Claim 72 (the parent to claim 80) requires that the computing device include a first hard drive and be configured to store the processed audio signal in a raw event file on the first hard drive. On the other hand, the editing module 200 of Griner does not store the raw event file, and therefore cannot be the computing device within the meaning of claim 80. Rather, the raw event file (or "primary event file") of Griner is stored in the primary storage module 130 and not the editing module 200. (Griner 6:35) The cited portions of Griner do not disclose that the primary storage module 130 includes editing software to enable editing the content of segment files as required by claim 80. Accordingly, claim 80 is not anticipated by Griner.

Claim 81 was rewritten to be an independent claim and includes the limitation: "a master recorder coupled to the computing device, the master recorder including *a master recorder hard drive* for storing the *segment files* created by the computing device." The cited portions of Griner do not disclose this limitation. Griner does make mention of a secondary storage drive 230 and of the fact that this drive is used to store digital track files. (Griner, 7:34) However the digital track files of Griner are not equivalent to the segment files of claim 81. Therefore claim 81 is patentable over Griner.

Dependent claims 82 - 88 which depend, directly or indirectly from independent claim 81, and incorporate all of the limitations of this claim, include additional limitations. Thus for these reasons and for the reasons discussed above, Applicant submits that dependent claims 82 - 88 patentably distinguish over Griner. Furthermore, these dependent claims are directed to additional patentable combinations of features and are allowable on those bases as well.

Claim 89 was rewritten to be an independent claim and includes the limitation: "wherein the computing device is configured to format the segment files thereby creating formatted segment files for downloading via the network." There has been no citation to a portion of Griner that discloses the formatting of segment files for downloading via the network. Accordingly claim 89 is patentable over Griner.

Dependent claims 93 - 97 which depend, directly or indirectly from independent claim 89, and incorporate all of the limitations of this claim, include additional limitations. Thus for these reasons and for the reasons discussed above, Applicant submits that dependent claims 93 - 97 patentably distinguish over Griner. Furthermore, these dependent claims are directed to additional patentable combinations of features and are allowable on those bases as well.

There are additional grounds in support of the patentability of claim 93. This claim includes the limitation: "wherein the computing device includes a server that operates a website on the network." There has been no citation to a portion of Griner that discloses a server that operates a website on a network. Accordingly claim 93 is patentable over Griner.

There are additional grounds in support of the patentability of claim 94. This claim includes the limitation: "wherein the computing device is configured to format each segment file in MP3 format for downloading by a personal computing device operated by an attendee at the venue." There has been no citation to a portion of Griner that discloses a computing device that is configured to format a segment file in MP3 format. Moreover, no portion of Griner has been cited for disclosing the limitation: "downloading by a personal computing device operated by an attendee at the venue." For at least these two, additional reasons, claim 94 is patentable over Griner.

As to claim 95, this includes the limitation: "wherein the computing device is configured to process payments in exchange for information with which an attendee may download a copy of the recording while attending the performance." There has been no citation to a portion of Griner that discloses a computing device that is configured to process payments in exchange for information. Also, no portion of Griner has been cited that discloses information which an attendee may use to download a copy of the recording while attending the performance, as required by this claim. For at least these two, additional reasons, claim 95 is patentable over Griner.

As to claim 96, this includes the limitation: "wherein the information includes an account number and password." There has been no citation to a portion of Griner that discloses information that includes an account number and password. Thus claim 96 is patentable over Griner.

As to claim 97, this includes the limitation: "wherein the formatted segment files are encrypted to inhibit unauthorized downloading of the formatted segment files." There has been no citation to a portion of Griner that discloses formatted segment files that are encrypted to inhibit unauthorized downloading. Thus claim 97 is patentable over Griner.

As to independent claim 98, this was expressly addressed at pages 2 - 3 of the Office Action. Claim 98 includes the limitation: "a master recorder *directly coupled* to the input processor . . ." This limitation is supported in the specifications at least at page 24, line 29 - page 30, line 14 and FIG.1, reference numeral 13. On the other hand, the Office Action cites no portion of Griner that discloses this limitation, and the Office Action makes no mention of it.

Claim 98 further includes the limitation: "a duplicator configured to simultaneously copy the master CD onto a plurality of final CDs for distribution." Similarly, the Office Action cites no portion of Griner that discloses this limitation, and the Office Action makes no mention of it. While Griner includes some discussion of creating final CD's (Griner, 7:63 - 8:40), that portion of Griner does not disclose the foregoing claim limitation.

Accordingly for at least the foregoing two reasons, claim 98 is not anticipated by Griner, and withdrawal of the rejection to this claim is requested.

Dependent claims 99 - 100 which depend, directly or indirectly from independent claim 98, and incorporate all of the limitations of this claim, include additional limitations. Thus for these reasons and for the reasons discussed above, Applicant submits that dependent claims 99 - 100 patentably distinguish over Griner. Furthermore, these dependent claims are directed to additional patentable combinations of features and are allowable on those bases as well.

**Remarks Regarding an Information Disclosure Statement**

On June 10, 2008, Applicant filed an Information Disclosure Statement ("IDS") and paid the appropriate fee. Accordingly, it is respectfully requested that the references cited in this IDS be considered and that Applicant be provided with the IDS appropriately initialed by the Examiner.

***CONCLUSION***

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Specifically, Applicant reserves the right to pursue the subject matter of canceled Claims 1 - 71, 73 and 90 - 92, as well as other subject matter within the application, in one or more continuing applications. Accordingly, reviewers of this or any child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

For all the reasons advanced above, Applicant submits that the application is in a condition for allowance and that action is earnestly solicited.

Respectfully submitted,

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